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Multi-District Litigation: Navigating the 2020 Ransomware Experience

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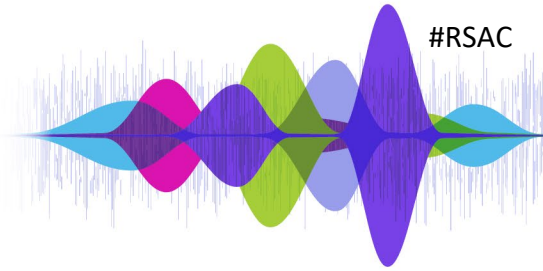

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Agenda

- Background
- Benefits of a Team-Based Approach
- Remediation and Negotiated Injunctive Relief
- Communications
- Managing MDL Discovery and Litigation

Background of Incident and Its Aftermath

- 2020 Ransomware Attack
- MDL – how it differs from other lawsuits
  - MDL formation
  - Case sequence
  - Current status
- Concurrent regulatory inquiries

Team-Based Approach

- Fact development and workstream
- Litigation management systems
- Devoting in-house resources (coordinating with CISO)
- Selecting and managing experts
- Coordination between litigation and regulatory investigations

Remediation and Negotiated Injunctive Relief

- What should a company consider?
- Effect of remediation on MDL arguments
- Managing regulatory requests for injunctive relief
- Litigation demands for injunctive relief
- Shareholder/government relations considerations
- SEC considerations

Communications Plan

- Development of communications
- Communication of regulatory inquires and their resolution
  - SEC and other public disclosure obligations
- Communications considerations in the MDL (e.g., demand for “corrective notice”)
- Shareholder/SEC relations during investigations and litigation
- Stakeholder relations
  - Tips on managing customer reaction in conjunction with the other audiences one needs to communicate with
  - Internal comms (managing Board, C-suite, and general employee questions)
  - Communicating with insurance carriers

Managing MDL Discovery and Litigation

- Discovery process in MDL
- Working with outside counsel to process demands and negotiate discovery parameters
- Role of former employees
- MDL discovery considerations in light of ongoing regulatory inquires and discovery demands
- Effectively marshalling discovery to defeat class certification

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Key Takeaways

Communication is Key

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Final Thoughts

- Takeaway #1: Assemble a team with experience. Honest assessment of internal skills; complement with outside experts.
- Takeaway #2: Planning and effective communication leads to success. **Understand the emotional impact.**
- Takeaway #3: Provide CISO with executive team and board exposure and support.

Final Thoughts

- Takeway #4: Be prepared. *Now is the time to act.* **Consider different approaches to tabletops:**
  1) Don’t stop too soon in the process
  2) Include all parties likely to be involved
  3) Don’t ignore the emotional impact
  4) Remember: “The only source of knowledge is experience.”

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Thank You